IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

CWP.No.644 of 2001,

Date of Decision :28.3.2007.

Vipan Kumar …Petitioner.

Versus:

Union of India and others. …Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the petitioner: Mr.S.D.Gill, Advocate.

For Respondents. Mr.K.B.Khajuria,Central Govt. counsel.

Sanjay Karol, J (Oral).

This order is being dictated in open Court in the presence of the learned counsel for the parties.

By way of this writ petition the petitioner has prayed for as under:

"(a) To grant alternate service to the petitioner as Clerk in non-combat area;

(b) To grant pension and other benefits to the petitioner as available to the Army Personnels who are discharged for medical reasons;

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

(c) To direct the respondents to treat the petitioner as discharged on the basis of illness acquired during service and to grant him all the benefits available to an ex-serviceman on the basis of such discharge; and

(d) Any other writ order or direction this Hon'ble Court deems just and proper in the facts and circumstances may please be issued to the respondents to meet the ends of justice"

Petitioner-Vipan Kumar was enrolled in the Army (The Grenadiers) on 28th January, 2000 as an infantry soldier (General Duty) in group `Y' through Branch Recruiting Office Hamirpur (HP). His primary medical examination was carried out by Recruiting Medical Officer of Branch Recruiting Office, Hamirpur on 15th October, 1999 and he was found temporary unfit as Ear Wax. Therefore he was referred to Military Hospital Jalandhar where he was declared fit by Graded Specialist ENT Maj. Subodh Kumar on 28th October, 1999.

He was allowed to undergo his basic military training w.e.f. 20.3.2000 till second medical examination was carried out at the Grenadiers Regimental Centre. At the time of second medical examination it was detected that the petitioner had been suffering from MYOPIC ASTIGMATISM (379). As such he was declared unfit for service. He was then further referred to the military hospital, Jabalpur for correct diagnosis of his disability where he was carefully examined by the Specialist who also graded him as suffering from MYOPIC

ASTIGMATISM (379), and declared him unfit for service. He was then further referred to the senior advisor in Ophthalmology at Command Hospital, Lucknow, who is the senior most Ophthalmologist in the Central command. The senior Advisor Ophthalmologist, Command Hospital Lucknow also found MYOPIC ASTIGMATISM (379), and declared him unfit with a recommendation to be invalided out of service or may be recommended to clerks, non combatant or cook duties. Not only this petitioner was brought before the invaliding medical board on 18th August, 2000 and subsequently after approval of medical board he was invalided out of service on 16th October 2000 under Army Rule 13 (3) item IV in medical category `EEE' being unlikely to become an efficient soldier.

It is contended by Shri K.B. Khajuria learned counsel for the respondents that in order to enable the petitioner to avail any statutory benefit, he has to show as to how he is entitled for the same. According to him, it is undisputed that the disability benefit can be given only if the disability is assessed more than 20% and that too is attributable or aggravated by military service.

Admittedly, the petitioner's disability is less than 20%, thus disentitling him for any benefit as disability pension. Circular issued by the respondents (Annexure:R-2) does not entitle the petitioner for change of trade from soldier G.D. to soldier CLK/SKT category. In fact, it is not permissible at all. There is no challenge to the said circular. The

entitlements of the petitioner for the same have to be dealt with in accordance with the rules and provisions of law only. For the facts mentioned hereinabove, I see no reason to interfere with the impugned orders. Detailed examination by various specialists only shows that the action is not arbitrary, capricious or whimsical.

In this view of the matter, petitioner is not entitled to any of the benefit as prayed for in the writ petition. Consequently, the writ petition is dismissed with no order as to costs.

(Sanjay Karol),
Judge.

March 28, 2007(R)